

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Omar Rodriguez - *frants*

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Philadelphia

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rose Legal Practice, LLC
1500 3rd St. Bldg. 1525
Philadelphia, PA 19102

215.827.7177

DEFENDANTS

School District of Philadelphia
School Dist. Officer Ryan Smith

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Philadelphia

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF

☒ 1☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF

☐ 4☒ 4

Citizen of Another State

☐ 2☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

☐ 6☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District (specify)☐ 6 Multidistrict Litigation - Transfer☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1993

Brief description of cause:

Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/17/17

SIGNATURE OF ATTORNEY OF RECORD

RJR

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AUG 18 2017

JCD

UNITED STATES DISTRICT COURT

17

3736

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 324 E. Ontario St. Philadelphia, PA 19134Address of Defendant: 440 W. Broad Street, Ste. 313 Philadelphia, PA 19100Place of Accident, Incident or Transaction: School Dist. of Philadelphia School

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) _____
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Riley H. Ross III, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 8/17/17Riley H. Ross III

Attorney-at-Law

204626

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8/17/17Riley H. Ross III

Attorney-at-Law

204676

Attorney I.D.#

AUG 18 2017



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

v.

CIVIL ACTION

NO. **17 3736**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

8/17/17
Date

RH/
Attorney-at-law

Plaintiff
Attorney for

215.587.7177

215.587.0628

rlgross@rossless/prostate.com

Telephone

FAX Number

E-Mail Address

AUG 18 2017



RILEY H. ROSS III
Attorney at Law

2017 AUG 18 P 7:21

USDC-EDPA
PHILADELPHIA

August 18, 2017

17 3736

Clerk's Office
U.S. District Court, ED of PA
2609 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1797

Re: Rodriguez Fuentes v. The School District of Philadelphia, et al.

Dear Clerk's Office:

Please accept this true paper and .PDF copy of the Complaint in connection with the above captioned matter. Kindly disregard the earlier filed paper and .PDF version of the Complaint as the enclosed document is the version my office intended to file.

Please feel free to reach out should you have any questions or concerns. Thank you for your attention to this matter.

Very truly yours,

Riley H. Ross III, Esquire

RHR/tja
Enclosure

#400
JCI

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2017 AUG 18 P 7:21

OMAR RODRIGUEZ FUENTES
324 East Ontario Street
Philadelphia, PA 19134

VS.

SCHOOL DISTRICT OF THE
CITY OF PHILADELPHIA
440 North Broad Street, Suite 313
Philadelphia, PA 19130-4015

and

SCHOOL DISTRICT POLICE OFFICER SMITH,
BADGE No. 2712
Individually and as a police officer for
the School District of Philadelphia,
440 North Broad Street, Suite 313
Philadelphia, PA 19130-4015

Civil Action No.

17

3736

JURY TRIAL DEMANDED

COMPLAINT

JURISDICTION

This action is brought pursuant to 42 U.S.C. §§1983 and 1988. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343(1), (3) and (4) and the aforementioned statutory provisions. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to adjudicate claims arising under state law.

VENUE

1. Venue is appropriately laid in this Court pursuant to 28 U.S.C. §1391(b) in that the actions complained of took place in Philadelphia, which is within the bounds of the Eastern District, and Defendants carry on business within the Eastern District.

PARTIES

2. Plaintiff, Omar Rodriguez Fuentes (hereinafter, "Plaintiff"), is a citizen of the Commonwealth of Pennsylvania, and presently resides at 2311 N. 7th Street, Apt. #3, Philadelphia, PA 19133.

3. Upon information and belief, at all times relevant to the instant Complaint, Defendant School District of the City of Philadelphia (hereinafter, "School District") was a public school district within the Commonwealth of Pennsylvania with a principal place of business at 440 North Broad Street, Suite 313, Philadelphia, PA 19130. Defendant School District was established by an act of the General Assembly, Public School Code of 1949, Act of March 10, 1949, P.O. 30, as amended, Title 24 P.S. §§1-101 – 27-2702. Defendant Philadelphia School District operated as an independent home rule school district under the First Class City Public Education Home Rule Act, Act of August 9, 1963, P.L. 643, as amended, Title 53 P.S. §§13201 – 13223. Defendant Philadelphia School District acted as an agent of the Commonwealth of Pennsylvania for the sole purpose of administering its constitutional, statutory and contractual obligation to maintain and support a system of public education in the City of Philadelphia and at all times relevant to the instant Complaint was the public employer of Defendant School District Police Officer Ryan Smith.

4. Upon information and belief, at all times relevant to the instant Complaint, Defendant School District Police Officer Ryan Smith (hereinafter, "Officer Smith") was a police officer with the School District of Philadelphia, Badge No. 2712, with a principal place of business at 440 North Broad Street, Philadelphia, PA 19130. At all times relevant to the Complaint, Officer Smith was assigned to police Kensington Health & Sciences Academy, located at 2463 Emerald Street, Philadelphia, Pennsylvania, 19125. At all times relevant to the Complaint, Officer Smith

was employed by the School District, acting in the course and scope of his employment and acting under the color of state law. He is being sued in his individual and official capacity.

FACTUAL ALLEGATIONS

5. At all times relevant to the instant Complaint, Kensington Health & Sciences Academy was a public school within the School District of Philadelphia, located at 2463 Emerald Street, Philadelphia, Pennsylvania, 19125.

6. At all times relevant to the instant Complaint, Plaintiff was enrolled as a student at Kensington Business High School.

7. Plaintiff turned 18 on August 19, 2015.

8. On April 16, 2015, at approximately 2:30 p.m., Plaintiff was waiting outside the Kensington Health & Sciences Academy with his girlfriend, Angie Martinez, waiting for Angie Martinez's sister.

9. While Plaintiff was waiting, Angie Martinez became involved in an argument with another, unknown female. The argument escalated and led to a physical fight between Ms. Martinez and the unknown female.

10. A few minutes after the fight commenced, Officer Smith appeared on the scene and made an attempt to apparently stop Ms. Martinez and the unknown female from fighting.

11. At this time, Officer Smith violently grabbed Ms. Martinez by the neck and placed her in a chokehold grip to restrain her.

12. Upon observing that his then-girlfriend, Ms. Martinez was being violently restrained, Plaintiff approached Officer Smith and requested that he release Ms. Martinez from the chokehold.

13. In response, Officer Smith, without any verbal notice or warning, released Ms. Martinez, approached Plaintiff and attacked, struck, punched, bludgeoned, knocked him to the ground and thereafter kicked and stomped Plaintiff while he was on the ground.

14. Officer Smith's attack upon Plaintiff lasted approximately 30-40 seconds before he relented and ceased his assault.

15. As a result of Defendant Officer Smith's actions, Plaintiff was caused to suffer contusions to his mandible, lacerations to his right hand and bruises to the areas of his torso, face and head.

16. Subsequently, Plaintiff was transported to the Temple, Episcopal Campus emergency Room.

17. On April 17, 2015, Officer Smith gave a false statement to Police Officer Caniolo. In his statement, Officer Smith states that he was breaking up a fight when Plaintiff approached him from behind, grabbed him, and punched him in the head. This statement was placed in a Complaint or Incident Report filed against Plaintiff.

18. Video footage of the incident depicts Plaintiff asking Officer Smith to stop choking his girlfriend, followed by Officer Smith approaching Plaintiff and attacking, striking, punching, bludgeoning, knocking him to the ground and thereafter kicking and stomping Plaintiff while he was on the ground. The footage also reveals that Plaintiff never made physical contact with Officer Smith.

19. At no time during the above-described encounter did Plaintiff threaten, attempt to physically attack or threaten Officer Smith or instigate the situation.

20. At the time of the incident, Plaintiff did not commit any offense against the ordinances of the City of Philadelphia, the laws of the Commonwealth of Pennsylvania, or the laws of the United States of America.

21. At the time of the incident, Plaintiff did not engage in any conduct that justified the actions of Officer Smith.

22. Officer Smith acted willfully, deliberately, maliciously or with reckless disregard of Plaintiff's constitutional and statutory rights.

23. Officer Smith engaged in the aforementioned conduct for the purpose of violating Plaintiff's constitutional rights by subjecting him to excessive force.

24. As a direct and proximate result of the illegal and unconstitutional actions of Officer Smith, Plaintiff sustained physical and psychological harm, substantial pain and suffering, all to his detriment and loss.

COUNT I
VIOLATION OF THE FOURTH AMENDMENT – USE OF EXCESSIVE FORCE
PLAINTIFF VS. ALL DEFENDANTS

25. The allegations set forth in paragraphs 1 through 24 are incorporated herein by reference.

26. On or about April 16, 2015, Officer Smith, an employee of Defendant School District, did knowingly, intentionally, maliciously and recklessly subject Plaintiff to excessive force.

27. Defendants subjected Plaintiff to this deprivation of rights unreasonably, intentionally, wantonly, outrageously, and with conscious and reckless disregard for whether Plaintiff's rights would be violated by their actions.

28. The actions of Officer Smith exceeded the normal standards of decent conduct, and were willful, malicious, oppressive, outrageous, and unjustifiable. Therefore, punitive damages are necessary and appropriate.

29. As a direct and proximate result of all Defendants' actions, more particularly described above, Plaintiff's rights protected under the Fourth Amendment to be free from unreasonable search and seizure and to be free from the use of excessive force were violated, and Plaintiff suffered injury as a result.

30. Defendants subjected Plaintiff to these deprivations of rights unreasonably, intentionally, wantonly, outrageously, and with conscious and reckless disregard for whether Plaintiff's rights would be violated by their actions.

31. As a direct and proximate result of Defendants' conduct, Plaintiff suffered and continues to suffer deprivations of his rights, physical injuries, pain and suffering, emotional distress, and mental anguish, all to Plaintiff's great detriment and loss.

32. Solely as a result of Defendants' conduct, Plaintiff suffered substantial damages including the costs of this suit.

33. Plaintiff is entitled to attorney's fees and the cost of prosecution of this suit pursuant to 42 U.S.C. §1988.

WHEREFORE, Plaintiff requests that the Court find and determine, after trial by jury as appropriate, that Plaintiff suffered substantial and continuing injury as a result of deprivation of his civil and Constitutional rights, and otherwise wrongful conduct and award the following relief, as appropriate:

- i) a declaration that Defendants, jointly and severally, have violated Plaintiff's civil rights;
- ii) compensatory damages in excess of \$150,000;
- iii) pre-judgment interest, attorneys' fees and costs;
- iv) punitive damages against Defendants; and,

- v) such other legal and equitable relief as the Court deems just and proper.

COUNT II
VIOLATION OF THE FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS
PLAINTIFF VS. ALL DEFENDANTS

34. The allegations set forth in paragraphs 1 through 33 are incorporated herein by reference.

35. Defendants subjected Plaintiff to this deprivation of rights unreasonably, intentionally, wantonly, outrageously, and with conscious and reckless disregard for whether Plaintiff's rights would be violated by their actions.

36. As a direct and proximate result of Defendants' actions, more particularly described above, Plaintiff's substantive due process rights protected under the Fourteenth Amendment were violated and he suffered bodily injury.

37. As a direct and proximate result of Defendants' conduct, committed under color of state law, Defendants deprived Plaintiff of his right, privilege, and immunity under the laws and the Constitution of the United States; Plaintiff's right to equal protection of law. As a result, Plaintiff suffered and continues to suffer harm in violation of Plaintiff's rights under the laws and Constitution of the United States, in particular the Fourteenth Amendment.

38. As a direct and proximate result of the acts and omissions of all Defendants, Plaintiff endured pain and suffering, physical injuries and emotional harm, all to his detriment and loss.

WHEREFORE, Plaintiffs request that the Court find and determine, after trial by jury as appropriate, that Plaintiff suffered substantial and continuing injury as a result of deprivation of his civil and Constitutional rights, and otherwise wrongful conduct and award the following relief, as appropriate:

- i) a declaration that Defendants, jointly and severally, have violated Plaintiff's civil rights;

- ii) compensatory damages in excess of \$150,000;
- iii) pre-judgment interest, attorneys' fees and costs;
- iv) punitive damages against Defendants; and,
- v) such other legal and equitable relief as the Court deems just and proper.

COUNT III
FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS
PLAINTIFF VS. ALL DEFENDANTS

39. The allegations set forth in paragraphs 1 through 38 are incorporated herein by reference.

40. Defendants subjected Plaintiff to this deprivation of rights unreasonably, intentionally, wantonly, outrageously, and with conscious and reckless disregard for whether Plaintiff's rights would be violated by their actions.

41. As a direct and proximate result of Defendants' actions, more particularly described above, Plaintiff's procedural due process rights protected under the Fourteenth Amendment were violated and he suffered bodily injury.

42. As a direct and proximate result of Defendants' conduct, committed under color of state law, Defendants deprived Plaintiff of his right, privilege, and immunity under the laws and the Constitution of the United States; Plaintiff's right to equal protection of law. As a result, Plaintiff suffered and continues to suffer harm in violation of Plaintiff's rights under the laws and Constitution of the United States, in particular the Fourteenth Amendment.

43. As a direct and proximate result of the acts and omissions of all Defendants, Plaintiff endured pain and suffering, physical injuries and emotional harm, all to his detriment and loss.

WHEREFORE, Plaintiffs request that the Court find and determine, after trial by jury as appropriate, that Plaintiff suffered substantial and continuing injury as a result of deprivation of

his civil and Constitutional rights, and otherwise wrongful conduct and award the following relief, as appropriate:

- i) a declaration that Defendants, jointly and severally, have violated Plaintiff's civil rights;
- ii) compensatory damages in excess of \$150,000;
- iii) pre-judgment interest, attorneys' fees and costs;
- iv) punitive damages Defendants; and,
- v) such other legal and equitable relief as the Court deems just and proper.

COUNT IV
VIOLATION OF 42 U.S.C. § 1983: FAILURE TO
PROPERLY TRAIN AND SUPERVISE
PLAINTIFF VS. DEFENDANT SCHOOL DISTRICT

44. The allegations set forth in paragraphs 1 through 43 are incorporated herein by reference.

45. Defendant School District of Philadelphia has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the needs for more or different training, supervision, investigation or discipline in the areas of:

- a. The abuse of police powers, including but not limited to excessive force;
- b. Police officers' use of their status as police officers to employ the use of excessive force or to achieve ends not reasonably related to their police duties; and
- c. The failure of police officers to follow established policies, procedures, directive and instructions regarding the use of force as presented herein.

46. The School District of Philadelphia failed to properly sanction or discipline officers, who are aware of and subsequently conceal and/or aid and abet violations of constitutional rights of citizens by School District of Philadelphia Police Officers, thereby causing and encouraging

school police officers, including the defendant officer in this case, to violate the rights of citizens such as Plaintiff.

47. The School District of Philadelphia has been put on notice of its need to better hire and train its police officers as many officers have been exposed in the past to have been hired despite prior criminal convictions and for failing to conduct themselves adequately as police officers by failing to report and police violent activity occurring at schools.

48. In 2010, the School District sent out a directive to its police officers to divulge prior arrests in an acknowledgment of its failed hiring and screening practices.

49. Michael Lodise, a one-time and possibly current union president for School District police officers has publically noted the need for an upgrade in training and screening of police applicants.

50. As a direct and proximate result of the Defendant School District's policies, practices, customs, procedures, failure to train and supervise, which are more specifically described above, Plaintiff was injured as stated herein.

51. As a direct and proximate result of, or by virtue of an affirmative link or causal nexus thereto, the aforesaid acts, omissions, deliberate indifference, systemic deficiencies, policies, practices and customs of the Defendant School District, as more fully described above, Defendant School District violated Plaintiff's rights under the laws and Constitution of the United States, in particular the Fourth and Fourteenth Amendments.

52. Plaintiff is entitled to attorney's fees and costs of the prosecution of this suit pursuant to 42 U.S.C. §1988.

WHEREFORE, Plaintiffs request that the Court find and determine, after trial by jury as appropriate, that Plaintiff suffered substantial and continuing injury as a result of deprivation of

his civil and Constitutional rights, and otherwise wrongful conduct and award the following relief, as appropriate:

- i) a declaration that Defendants, jointly and severally, have violated Plaintiff's civil rights;
- ii) compensatory damages in excess of \$150,000;
- iii) pre-judgment interest, attorneys' fees and costs;
- iv) punitive damages against Defendants; and,
- v) such other legal and equitable relief as the Court deems just and proper.

COUNT V
SUPPLEMENTAL STATE CLAIM
NEGLIGENT HIRING, RETENTION, AND SUPERVISION
PLAINTIFF VS. DEFENDANT SCHOOL DISTRICT

53. The allegations set forth in paragraphs 1 through 52 are incorporated herein by reference.

54. Defendant School District owed Plaintiff a duty to exercise reasonable care in the selection and training of its employees to protect others from a foreseeable risk of harm.

55. Upon information and belief, Defendant School District deviated from this standard of care by:

- a. Failing to exercise reasonable care in the selection and training of its employees, namely Defendant Officer Smith; and
- b. Failing to protect Plaintiff from the foreseeable risk of harm of abuse of police powers, including but not limited to excessive force and the use of employees' status as police officers to employ the use of excessive force or to achieve ends not reasonably related to their police duties.

56. The risk of harm to Plaintiff was reasonably foreseeable.

57. As a direct and proximate cause of Defendant School District's conduct, Plaintiff has endured damages as stated throughout this Complaint.

58. But for Defendant School District's breach and/or deviation from the applicable standard of care, Plaintiff would not have suffered the complained-of injuries.

WHEREFORE, Plaintiffs request that the Court find and determine, after trial by jury as appropriate, that Plaintiff suffered substantial and continuing injury as a result of deprivation of his civil and Constitutional rights, and otherwise wrongful conduct and award the following relief, as appropriate:

- i) a declaration that Defendants, jointly and severally, have violated Plaintiff's civil rights;
- ii) compensatory damages in excess of \$150,000;
- iii) pre-judgment interest, attorneys' fees and costs;
- iv) punitive damages against Defendants; and,
- v) such other legal and equitable relief as the Court deems just and proper.

JURY DEMAND

59. The allegations set forth in paragraphs 1 through 58 are incorporated herein by reference.
60. On all counts, facts and claims herein asserted, Plaintiff hereby demands a trial by jury.

Respectfully submitted,

ROSS LEGAL PRACTICE, LLC

BY: /s/ Riley H. Ross III
Riley H. Ross III, Esq.
1500 JFK Blvd. Suite 1525
Philadelphia, PA 19102
(215) 587-7177 (office)
(215) 587-0628 (fax)
rileyross@rosslegalpractice.com



Date: August 18, 2017